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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,224	11/16/2003	Jaclyn Michelle Willner		5023

7590 12/15/2004
Kerren Willner
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Manhasset, NY 11030

EXAMINER

BAXTER, GWENDOLYN WRENN

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,224

Applicant(s)

WILLNER ET AL.

Examiner

Gwendolyn Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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This is the first Office Action for serial number 10/715,224, Sheet Music Stand Helper, filed November 16, 2003.

Priority

Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119 (e) to a provisional application filed November 18, 2002.

Information Disclosure Statement

The foreign references submitted on November 16, 2003 have not been considered, since applicant has not formally filed an Information Disclosure Statement.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 4, line 1, “functionally related means”, Claim 6, lines 1 and 2, respectively, “connected means” and “following means”, and Claim 9 and 10, “securing devices mean” lack proper antecedent basis in the specification.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the instrument accessories, supplies, rosin, parts of music instruments, and clip on lamps or accessories that are functionally related of

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claim 3 and a metal clip or metal hinged arm or plastic hinged arm of claims 12 and 15 must be shown or the features canceled from the claims. A similar problem occurs in claim 16. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 3, 4, and 13-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how applicant intends to use of the instrument accessories, supplies, rosin, parts of music instruments, and clip on lamps or accessories. Additionally, applicant fails to show how the molded hinge integrally attached in the manufacture of the front and back panels.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 1 and 2, "(also referred to as a Music Stand Helper, also referred to as a Handi Stand Helper)" should be deleted. A correction is required to claim 13.

Claim 1, lines 4+, recites "a main compartment dimensioned to fit over at least all or a portion of the sheet bearing part of a music stand." The body structure of the auxiliary has been defined in terms of the music stand, but the stand has not been positively recited. Therefore, the scope of this claim is unclear. It is unclear if Applicant intends to claim a combination of the stand and auxiliary or a subcombination of the auxiliary. Please clarify.

Claim 1, lines 6, 7, 8, and 9, "a music stand" should read -the music stand-. A correction is required to claims 2, 13, and 16.

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Claim 1, line 9, the pronoun “it” should be replaced with the proper noun to avoid any ambiguity, therefore making the claim unclear. A correction is required to claims 13 and 16.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: one or more storage compartment.

Claim 2, line 4, “the envelope” lacks proper antecedent basis. A correction is required of claim 13.

Claim 2, lines 5 and 6, “the sleeve” lacks proper antecedent basis. A correction is required of claim 13.

Claim 3, line 3, “or” should be deleted.

Claim 5, line 2, recites “fabric sleeve” is a double inclusion of the main compartment which is found at claim 1, line 4. The inclusion of the same element twice makes the claim indefinite.

Claim 6, line 1, “where” should read –wherein-. A correction is required of claims 8-12, 14, 15 and 17.

Claim 6, line 2, “the following means” lacks proper antecedent basis.

Claims 6, 11 and 16 contain the trademark/trade name VELCRO. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular

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material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe hook and loop material fastener and, accordingly, the identification/description is indefinite.

Claim 7, line 2, it is unclear what is follow after the “following: ”.

Claim 13, “a front and back panel” should read –a front and back panels-.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 5,356,109 to Biasini. The present invention reads on Biasini as follows: Biasini teaches a music stand auxiliary comprises a body (10) structure and one or more securing devices (78). The body structure defines a main compartment dimensioned to fit over at least all or a portion of the sheet-bearing part of a music stand (12). An aperture (the portion that receives element 26 of the stand) on at least one side permits the addition to or removal from the music stand. The one or more securing devices hold one or more items associated with a music stand to it. The body structure is comprised in part or entirely of a material enabling viewing of one or more of the items to be held therein. The music stand on which the auxiliary music stand

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is placed stores materials within the compartments of the auxiliary music stand. The securing devices mean is made from a transparent material attached to the front of the auxiliary music stand, covering all or a portion of the front, with an aperture (to receive sheet music therein) on at least one side to permit the insertion and removal of sheets of paper and sheet music.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 11, 13, 14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biasini in view of U.S. Patent No. 4,702,453 to Bishop. Biasini teaches a music stand auxiliary comprises a body (10) structure and one or more storage compartments (78). The body structure defines a main compartment dimensioned to fit over at least all or a portion of the sheet-bearing part of a music stand (12). An aperture (the portion that receives element 26 of the stand) on at least one side is provided to permit addition to or removal from the music stand. Additionally, Biasini teaches one or more storage compartments (78). The storage compartment is dimensioned to store one or more items associated with a music stand. The storage compartment has an aperture formed on the exterior of the envelope or body structure such that each storage compartment is immediately and separately accessible from the exterior of the sleeve or aperture. The items comprise a combination of one or more of the following: sheet music (80), books, papers, writing implements, instrument accessories, supplies, rosin, parts of

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musical instruments, clip on lamps, or accessories that are functionally related. The functionally related means has ability to be replaced. The one of the storage compartments is constructed and arranged to store replaceable items. However, Biasini fails to teach the one or more securing devices hold one or more items associated with the music stand to it.

Bishop teaches one or more securing devices (6) used to hold one or more items associated with a music stand to it. The strap is made of material including the following: cord, rope, string, ribbon, woven material, or of vinyl, and that is attached to the Music Stand Helper by means including the following: stitching, Velcro, snaps, clips, buckles, ties, or magnets. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the auxiliary stand as taught by Biasini to have incorporated the a securing devices taught by Bishop for providing an alternate means for securing sheet material.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biasini. Biasini teaches an auxiliary stand having connected means held together permanently by glue or bonding. However, Biasini fails to teach the sleeve being made of fabric. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the sleeve as taught by Biasini to have incorporated the fabric, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable Biasini in view of U.S. Patent No. 2,807,908 to Lykes. Biasini teaches the limitation of the base claim, excluding the securing means being elastic.

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Lykes teaches a securing means being an elastic cord (5) attached to the top and bottom of the front of the supporting surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the auxiliary stand as taught by Biasini to have incorporated an elastic securing devices as taught by Lykes for providing an alternate means for securing sheet material.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable Biasini in view of Lykes and in further view of U.S. Patent No. 6,270,050 to Friedrich. Biasini in view of Lykes teaches the limitation of the base claim, excluding the securing means having a strip of sound dampening material.

Friedrich teaches the use of felt about the securing means. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the securing device as taught by Biasini in view of Lykes to have incorporated felt about the securing device as taught by Friedrich for purpose of preventing the marring of the article to be supported on the auxiliary stand.

Claim 12 is Biasini in view of U.S. Patent No. 4,360,183 to Biasini. Biasini teaches the limitation of the base claim, excluding the securing means being a plastic hinged arm.

Biasini '183 teaches a securing means being a plastic hinged arm (28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the auxiliary stand as taught by Biasini to have incorporated the plastic hinged arm as taught by Biasini '183 for providing an alternate means for securing sheet material.

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Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable Biasini in view of Bishop and in further view of U.S. Patent No. 5,746,410 to Hung. Biasini in view of Bishop teaches the limitation of the base claim, excluding the hinging device mean

Hung teaches a clip intergral with the device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the securing device as taught by Biasini in view of Bishop to have incorporated clip as taught by Hung for the purpose of providing an alternate means for securing sheet music to the auxiliary stand.

Conclusion

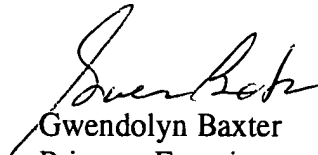
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leeb 5,413,305 teach front and back pockets; DE 3108643 A1 teaches a securing device; and Barcalo 1,928,806 and Wainscott 6,820,852 B2 teach body structures having a main compartment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 703-308-0702. The examiner can normally be reached on Monday-Wednesday, 8:00am -5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gwendolyn Baxter
Primary Examiner
Art Unit 3632

December 11, 2004